

(2023) 04 BOM CK 0004

In the Bombay High Court

Case No : Criminal Writ Petition No. 22 Of 2023

Himanshu

APPELLANT

Vs

Commissioner Of Police And Others

RESPONDENT

Date of Decision : 03-04-2023

Acts Referred:

Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers And Persons Engaged In Blackmarketing Of Essential Commodities Act, 1981 — Section 3, 3(1), 3(2), 3(3), 8, 9, 12, 13

Code Of Civil Procedure, 1908 — Section 110

Indian Penal Code, 1860 — Section 34, 307, 384

Arms Act, 1959 — Section 4, 25

Maharashtra Police Act, 1951 — Section 135, 142

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(c), 21

Citation : (2023) 04 BOM CK 0004

Hon'ble Judges : Vinay Joshi, J; Bharat P. Deshpande, J

Bench : Division Bench

Advocate : R.D.Kalra, V.A.Thakare

Final Decision : Dismissed

Judgement

Bharat P. Deshpande, J

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. By this petition, the petitioner is questioning the legality and correctness or otherwise of the detention order passed by respondent no.1 on 30.7.2022 and confirmed by respondent no.2 on 14.9.2022, thereby detaining the petitioner for a period of one year from the date of taking him in custody, under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-marketing of Essential Commodities Act, 1981 (for short, "Act").
3. Heard Mr. Kalra, learned counsel for the petitioner and Mr. Thakare, learned

APP for the respondents - State at length.

4. Reply-affidavit is filed on behalf of respondent no.1 strongly opposing contentions raised in the petition.

5. Basically three submissions were advanced by Mr. Kalra, learned counsel on behalf of the petitioner, while challenging both orders. It is his first contention that the order of detention and more specifically, the confirmation of respondent no.2 under Section 12 of the said Act dated 14.9.2022 for detaining the detainee for a period of 12 months at a stretch is wholly illegal and contrary to the provision of Section 3 of the said Act. While elaborating his submission, he would submit that the proviso to Section 3 (2) of the said Act mandates that at the initial stage, the Authority has power only to issue detention order for a period of six months, which could be extended from time to time but, not more than twelve months. In this respect, Mr. Kalra heavily placed reliance on the decision of the Division Bench of this Court at Aurangabad in the case of Balu s/o Waman Patole Vs. The Commissioner of Police and others in Criminal Writ Petition No.155/2019 decided on 26.3.2019.

6. The second limb of his argument is that bail orders were not considered by the Detaining Authority and, therefore, there is no subjective satisfaction arrived at by considering the entire material. He would submit that the Detaining Authority failed to consider that the detainee was granted bail in one of the matters, which forms part and parcel of the consideration.

7. Thirdly, Mr. Kalra would submit that statements of the witnesses were not verified by the concerned authority and there is nothing on record to show that the Detaining Authority was satisfied that such witnesses genuinely disclosed the fear that they would not be able to attend the Court, if required. He then would submit that there is a delay in passing the detention order from the date of the last offence and such unexplained delay vitiates the proceedings. According to him, the last offence in which the detainee was booked, took place somewhere in April 2022 whereas the detention order is passed in July 2022. In this respect, he placed reliance on the decision of this Court delivered by the coordinate bench in the case of Alakshit s/o Rajesh Ambade Vs. The State of Maharashtra and another in Criminal Writ Petition No. 626/2022 dated 20.12.2022. In connection with delay of passing the detention order, he placed reliance on the decision in the case of Shivkumar Madeshwaran Devendra Vs. The State of Maharashtra in Criminal Writ Petition No.3309/2021 decided on 15.6.2022. Lastly, he placed reliance on the decision of this Court in the case of Smt. Bismilah wd/o Sheikh Rahim Vs. The State of Maharashtra in Criminal Writ Petition No.73/2022 and connected matters decided on 21.10.2022.

8. Per contra, learned APP vehemently opposed the contentions raised in the present petition and would submit that it is well settled proposition of law that the Detaining Authority need not specify the period of detention in the order. He submitted that even if the detention order is silent about the period of detention,

it would not affect the said order as maximum period of detention as per the Act is 12 months. He would further submit that even if the detention order nowhere refers the period of detention, the confirmation order passed by respondent no.2 on 14.9.2022 under Section 12 of the said Act specify the period of detention as 12 months.

9. Learned APP would further submit that the decision of coordinate bench of this Court in the case of Balu s/o Waman Patole (supra) delivered by Aurangabad Bench is per incurium, as this decision was delivered without considering the decision of the Apex Court in the case of Mrs. T.Devaki Vs. Government of Tamil Nadu and others (AIR 1990 SC 1086).

10. Learned APP further pointed out that the case of Commissioner of Police and another Vs. Gurbux Anandram Bhiryani [1988 (Supp) SCC 568], was considered as not good law by the larger bench of the Apex Court in the case of Mrs. T.Devaki (supra).

11. Learned APP would then submit that there is no delay in passing the detaining order as the detinue was already in custody in an offence of attempt to murder and, therefore, even though he was granted bail in another lesser offence, he remained in judicial custody till the order of detention. While inviting our attention, learned APP would submit that the reasons for detention would show that the Detaining Authority has considered all aspects including verification of the statements of the witnesses A & B, subjective satisfaction of about the grounds and fear in the mind of general public in the locality before considering the detinue as dangerous person. He, therefore, submitted that detailed reasonings found in the detention order need no interference as the Detaining Authority considered each and every aspect which has been confirmed by the Government and even by the Advisory Board, after giving personal hearing to the detinue.

12. Learned APP placed the entire file of detention of the petitioner for our perusal.

13. Rival contentions fall for our consideration as under:

(i) Vide order dated 30.7.2022 passed by respondent no.1, the petitioner was detained under Section 3 (2) of the said Act, on the ground that the detinue is considered as dangerous person and it is expedient to detain him with a view to preventing him from acting in any manner prejudicial to the maintenance of public order as all other preventive measures failed.

(ii) Along with the said order, the reasons/grounds for detention dated 30.7.2022, under Section 8 of the said Act were communicated to the petitioner.

(iii) It is the contention of the Detaining Authority in the grounds of detention that since the year 2021, the detinue has been continuously engaging himself in commission of violent and desperate criminal activities. The offences committed by the detinue are in the nature of attempt to commit murder, voluntarily

causing grievous hurt by dangerous weapons, intentionally insulting with intent to provoke the breach of peace, extortion, roaming armed with deadly weapon, violation of prohibitory orders thereby putting life and liberty of local people in danger and disturbing the public order in general. Thus, all preventive actions taken to curb such activities were found to be ineffective. The Detaining Authority then observed that as per the available record, the detainee was involved in various serious offences under Chapters XVI and XVII of the Indian Penal Code and Chapter V of the Indian Arms Act. In para 4, the list of past offences in which the petitioner is involved are shown as under:

Sr. No.

P.Stn.& Cr.No.

Under Section

Date of Offence

C.C.No.& Date

Remarks

1

Imamwada 221/2021

307, 326, 504, 34 I.P.C.

01.06.2021

2795/2021 04.08.2021

Court pending

2

Imamwada 474/2021

4/25 Indian Arms Act r/w 135 Maharashtra Police Act

01.10.2021

333/2022 15.01.2022

Court pending

(iv) The grounds of detention further show that even preventive action under Section 110 of the Code of Criminal Procedure was initiated wherein the petitioner was asked to execute bond for maintaining good behaviour for a period of two years from 4.9.2021. The details of which are found in para 5 of the grounds of the detention.

(v) The Detaining Authority further observed that even after the arrest of the petitioner in various crimes, prosecution and preventive action taken against

him, did not prevent the petitioner from committing further criminal acts whenever he is released on bail". The petitioner was found in commission of serious and grievous offences whenever he was released on bail by the Court.

(vi) The Detaining Authority then considered two crime numbers registered against the petitioner for considering the detention as found in para 7 and reads thus:-

Sr. No.

P.Stn.& Cr.No.

Under Section

Date of Offence

C.C.No.& Date

Remarks

1

Imamwada 135/2022

307, 384, 34 I.P.C. r/w 4/25 Indian Arms Act, 135, 142 Maha. Police Act

22.04.2022

2967/2022 06.07.2022

Court pending

2

Imamwada 136/2022

4/25 Indian Arms Act r/w 135, 142 Maha. Police Act

22.04.2022

2261/2022 03.06.2022

Court pending

(vii) The Detaining Authority in para nos. 7.1. to 7.2.5 discussed in detail the particulars of the offences and other criminal activities in which the petitioner is found involved. Crime no.135/2022 registered at Police Station, Imamwada, is for the offence punishable under Sections 307, 384 read with Section 34 of the Indian Penal Code, Sections 4/25 of the Indian Arms Act and Sections 135 and 142 of the Maharashtra Police Act. This offence was registered on the basis of complaint dated 21.4.2022. Not only the petitioner but, his associate by name Saurabh alias Besan s/o Suresh Masram, who is an extern, was also involved in said serious offence of attempt to murder. It needs to be noted that the petitioner was in custody in Crime No.135/2022 till the detention order passed

on 30.7.2022. His bail application was rejected by the Sessions Court.

(viii) The Detaining Authority also considered another Crime No.136/2022 for the offences punishable under Section 4/25 of the Indian Arms Act and Sections 135 and 142 of the Maharashtra Police Act registered against the petitioner and Saurabh on 25.4.2022 wherein charge-sheet is already filed. It needs to be noted that in this case the petitioner was granted bail by the Court. However, since the petitioner was already in judicial custody in Crime No.135/2022, he was not released though in another matter he was granted bail. Thus, it is a matter of record that till passing of the detention order, petitioner was in judicial custody.

(ix) The Detaining Authority in para no.7.1.5 observed that the petitioner on 17.5.2022 filed Misc. Criminal Application No.1224/2022 for grant of bail, in Crime No.135/2022 before the Sessions Court, which was rejected by the Additional Sessions Judge on 21.5.2022.

(x) The Detaining Authority apart from the above two criminal cases, also considered the statements of witnesses A and B in para 8. Both these witnesses stated that somewhere in third week of April 2022 during night hours when they were returning home and passing from T.B.Ward behind Jat-tarodi, Galli no.3 and from Kundanlal Gupta Library, the detainee and his associate were found carrying open swords. Both these witnesses were forceably stopped, abused in filthy language, threatened and cash amount found with them was forceably removed by the petitioner. Though such incidences were witnessed by people in the locality including passers-by, no one came forward as detainee along with his associate threatened the public. Due to fear, no one reported such matters to the police.

(xi) The Detaining Authority in para no.9 then observed that after carefully considering the material, he came to the conclusion that on subjective satisfaction that the activity of the detainee are in the manner prejudicial to maintenance of public order. The Detaining Authority also observed that the detainee is in magisterial custody in Crime No.135/2022 and that the detainee has filed bail application before the Sessions Court which was rejected. The Detaining Authority further observed that there is possibility of filing of the charge-sheet in near future and accordingly the detainee would be applying for bail and there is every possibility of grant of bail on filing of the charge-sheet. The Detaining Authority, therefore, observed that after availing bail, the detainee is likely to revert to similar activities which are prejudicial to the maintenance of public order.

(xii) The Detaining Authority in para 11 then recorded that the confidential statements were verified and the report was placed before him and accordingly, he was satisfied that the detainee is dangerous person as defined under the Act. The Detaining Authority on the basis of personal discussion and verification of documents as well as material placed before it found on subjective satisfaction that the activities of detainee are extremely prejudicial to the maintenance of

public order and he is likely to indulge in similar activities, if not prevented by detaining him.

(xiii) In para 12 of the grounds of detention, the detainee was informed that pending approval, he has a right to make representation to the Detaining Authority and that the order of approval, if any, would be communicated to him in jail. It was further informed to the detainee that the Government shall within three weeks from the date of detention, make a reference and place requisite material before the Advisory Board constituted under Section 9 of the Act and that the Advisory Board would make its recommendation within seven weeks thereafter. The detainee was further informed that he has a right to make representation to the Government against such detention order and such representation shall be addressed to the Additional Chief Secretary (Home), Mantralaya, Mumbai. He was further informed that the Advisory Board may call upon the detainee to be heard in person and that if he wish to make any representation to the Advisory Board, he may do so through the Superintendent of Jail. Finally, the grounds of detention order show that the action is based on two serious offences and two in-camera statements as mentioned in paragraph nos.7 and 8 and that all such documents supplied to the detainee for making representation.

(xiv) The detention order passed by respondent no.1 dated 30.7.2022 did not disclose the period of detention. Similarly, another order passed on the same date show that the petitioner was informed that he shall be detained in Nashik Central Prison, Nashik. Vide order dated 8.8.2022 passed under Section 3(3) of the said Act by the State through Home Department, approval was granted to the order of detention passed by respondent no.1. Vide separate letter dated 8.8.2022 the petitioner was informed that in view of approval granted by the Government under Section 3(3) of the said Act, his right to represent against the detention stands terminated.

(xv) Final order dated 14.9.2022 under Section 12 of the said Act is passed by respondent no.2 wherein for the first time a period of detention is disclosed to the petitioner i.e. 12 months from the date of detention.

14. The first submission of the learned counsel Mr. Kalra is that the order of detention under Section 3 and confirmation of such order dated 14.9.2022 thereby informing the petitioner for the first time that he is detained for a period of 12 months, he is against the principles laid down in Sections 3 and 13 of the Act. He would submit that proviso to Section 3(2) mandates that the detention, at the first instance, shall not exceed six months but, the State Government may if satisfied that it is necessary to amend such order extend such period from time to time by any period not exceeding six months at any one time.

15. For the sake of convenience, Sections 3 and 13 are quoted below for ready reference:

"Section 3 : (1) The State Government may, if satisfied with respect to any

person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed [six months] but the State Government may, if satisfied as aforesaid that it is necessary so to amend such order to extend such period from time to time by any period not exceeding [six months] at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

Section 13. The maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under section 12, shall be [twelve months] from the date of detention”.

16. Mr. Kalra heavily placed reliance on the observations in the case of Balu s/o Waman Patole (supra) and, more specifically on para nos. 33 and 34, which read as under:

“33. The provisions of sections 3 and 13 of the Act read together show that the maximum period for which a person can be detained under section 13 is 12 months. The period of 12 months cannot be used in one order of confirmation of detention as in section 3 of the Act, it is provided that the period should not exceed six months at any one time. This provision is also not a mere formality. The State Government has the power to revoke the detention order and so, at least after the period of six months, the State Government is expected to reconsider the matter and take decision as to whether the detention for further period is necessary. As the detention order has base of the requirement of particular locality in view of the circumstances prevailing in that area, there cannot be one order of detention for 12 months. If the order of detention is not in accordance with these provisions and the order is for the period exceeding six months at the time, inference is possible that there was either non application of mind or there are malafides.

34. The record of present matter shows that there was no representation of the petitioner before the State Government and the Advisory Board. In the grounds of detention dated 15.10.2018, there is mention in para Nos.14, 15 and 17 about the information given to petitioner about his right to make representation. In para 14, it is mentioned that he may make representation to the detaining authority, the Commissioner. In para 15, there is mention that he may make representation to the State Government. In para 17, there is mention that he may make representation to Advisory Board. In communication dated 22.10.2018 made by the Secretary of the Advisory Board, there is mention that the petitioner can make representation to the Chairman of Advisory Board. In the communication in English language dated 17.10.2018 made by the State Government which was sent along with the order of approval of detention order, it was specifically mentioned that the right of detenu which was mentioned in para 14 of the grounds of detention was terminated. In Marathi version of this communication, no specific para of the grounds of detention was referred and it was only mentioned that the right to make representation to Police Commissioner Aurangabad had come to an end. The final order of the State Government dated 3.11.2018 shows that it was passed only on the basis of opinion of Advisory Board. That opinion was mentioned as reason for confirmation of detention and also for fixing the period of detention as one year. As there is no record of affording opportunity to make representation in real sense and as it was communicated that right to make representation may be to the Police Commissioner had come to an end and as the petitioner could not make representation, this Court holds that the opportunity to make representation as mentioned in section 8 of the Act was not really afforded to the petitioner. So, on this ground, the order is liable to be set aside. As already observed, due to circumstance that in one order, the detention period was fixed of one year, the order cannot sustain in law."

17. Learned APP appearing for the State submitted that the observations of this Court in the case of Balu s/o Waman Patole (supra) clearly shows that decision of the Apex Court in the case of Mrs. T. Devaki (supra) and other relevant decisions were not brought to the notice and, therefore, such observations are per incuriam. In this respect, he invited attention towards the observations of the Apex Court in the case of Gurbux Anandram Bhiryani (supra) wherein the Hon'ble Division Bench of the Apex Court observed in para 1, as under:

"1..... The order is bad on another ground, namely, the period of detention has not been indicated by the detaining authority. The scheme of this Act differs from the provisions contained in similar Acts by not prescribing a period of detention but as Section 3 of the Act indicates, there is an initial period of detention which can extend up to three months and that can be extended for periods of three months at a time. It was open to the detaining authority to detain the detenu even for a period of lesser duration than three months. That necessitated the period of detention to be specified and unless that was indicated in the order, the order would also be vitiated. In scores of decisions this Court has been

emphasising the necessity of strict compliance with the requirements of the preventive detention law; yet authorities on whom the power is conferred have not been complying with the requirements and even if there be merit to support the order of detention, the procedural defects lead to quashing thereof as a result of which the purpose of the Act is frustrated and the suffering in the community does not abate”.

18. It is necessary to note that in the above decision, the provisions of Section 3 of the said Act were considered and at that time the unamended proviso to Section 3(2) was under consideration which provides that at the first instance the period of detention shall not exceed three months.

19. This decision of the Apex Court in the case of Gurbux Anandram Bhiryani (supra) was considered by the bench of the Hon’ble Three Judges of the Apex Court in Mrs. T.Devaki (supra) and in para nos.11 and 15 it was observed that findings in Gurbux’s case are not correct.

20. In the case of Mrs. T. Devaki (supra) detention order passed under Tamil Nadu Prevention of Dangerous Activities Act, 1982 (TPDA Act) was challenged basically on two grounds. The first ground was that the order of detention was illegal since it did not specify the period of detention. The second ground is not relevant for deciding the present dispute. While deciding this aspect, the Apex Court observed that there was divergent views of the two division benches of the Apex Court, out of which one is the case of Gurbux Anandram Bhiryani (supra) and another was in the case of Ashok Kumar Vs. Delhi Administration (1982) 2 SCC 403, on the question of validity of the detention order on its failure to specify the period of detention. Therefore, the matter was referred to bench of Hon’ble three Judges. After considering the provisions of Section 3 of Tamil Nadu Act, which is parimateria with Maharashtra Act, the Apex observed from para nos. 10 to 15 as under:

“10. Provisions of the aforesaid Sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained cannot exceed 12 months from the date of detention. The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression "the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order" occurring in sub-section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The Legislature has taken care to entrust the power of detention to the State Government, as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by

providing that the delegation in the initial instance will not exceed for a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification.

11. Mr. R.K. Garg placed strong reliance on the decision of this Court in *Gurbax Biryani's case* (supra) (1988 (supp) SCC 568) (supra) to support his submission. In that case the detenu had been detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act 55 of 1981. The High Court quashed the detention order on the ground that the detenu had been released in criminal prosecution under Section 8(c) read with Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and he had been released on bail, but that fact had not been placed before the detaining authority. On appeal by special leave a Division Bench of this Court consisting of two Judges, dismissed the appeal without going into the merits of the case on the sole ground that the detention order was bad as the period of detention was not specified in the detention order. The Court observed as under:

"The order is bad on another ground, namely, the period of detention has not been indicated by the detaining authority. The scheme of this Act differs from the provisions contained in similar Acts by not prescribing a period of detention but as Section 3 of the Act indicates, there is an initial period of detention which can extend upto three months and that can be extended for periods of three months at a time. It was open to the detaining authority to detain the detenu even for a period of lesser duration than three months. That necessitated the period of detention to be specified and unless that was indicated in the order, the order would also be vitiated. In scores of decisions this Court has been emphasising the necessity of strict compliance with the requirements of the preventive detention law; yet authorities on whom the power is conferred have not been complying with the requirements and even if there be merit to support the order of detention, the procedural defects lead to quashing thereof as a result of which the purpose of the Act is frustrated and the suffering in the community does not abate."

With great respect we do not agree with the view expressed by the learned Judges.

12. Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-offenders Act, 1981 is identical in terms to Section 3 of the Tamil Nadu Act. Section 3 of Maharashtra Act does not require the State Government, District Magistrate or a Commissioner of Police to specify

period of detention in the order made by them for detaining any person with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. Section 3(1) which confers power on the State Government to make order directing detention of a person, does not require the State Government to specify the period of detention. Similarly, sub-sections (2) or (3) of Section 3 do not require the District Magistrate or the Commissioner of Police to specify period of detention while exercising their powers under sub-section (1) of Section 3. The observations made in Gurbux Biryani's case that the scheme of the Maharashtra Act was different from the provisions contained in other similar Acts and that Section 3 of the Act contemplated initial period of detention for three months at a time are not correct. The scheme as contained in other Acts providing for the detention of a person without trial, is similar. In this connection we have scrutinised, the Preventive Detention Act, 1950, the Maintenance of Internal Security Act, COFEPOSA Act, National Security Act but in none of these Acts the detaining authority is required to specify the period of detention while making the order of detention against a person. (Emphasis supplied)

13. This Court has consistently taken the view that an order of detention is not rendered illegal merely because it does not specify the period of detention. A Constitution Bench of this Court in *Ujagar Singh v. The State of Punjab*, [1952] 3 SCR 756: (AIR 1952 SC350), while considering validity of detention order made under Section 3 of the Preventive Detention Act 1950 held that non- specification of any definite period in a detention order made under Section 3 of the Act was not a material omission rendering the order invalid. In *Suna Ullah Butt v. State of Jammu & Kashmir*, [1973] 1 SCR 870 : (1972 SC 2431), validity of detention order made under Jammu and Kashmir Preventive Detention Act 1964 was under challenge on the ground that the State Government while confirming the detention order under Section 12 of the Act had failed to specify the period of detention. The Court held that since the State Government had power to revoke or modify the detention order at any time before the completion of the maximum period prescribed under the Act, it was not necessary for the State Government to specify the period of detention. In *Suresh Bhojraj Chelani v. State of Maharashtra*, [1983] 1 SCC 382; (AIR 1983 SC 181), while considering the validity of the detention order made under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 this Court rejected similar submission made on behalf of the detenu that order of detention was vitiated as the Government had failed to mention the period of detention while confirming the order of detention. The Court held that the COFEPOSA Act did not require the detaining authority to mention the period of detention in the order of detention. When no period is mentioned in an order, the implication is that the detention is for the maximum period prescribed under the Act.

14. In *A.K. Roy V. Union of India & Ors.*, [1982] 1 SCC 271; (AIR 1982 SC 710) a Constitution Bench of this Court considered the validity of the National Security Act (65 of 1980), Chandrachud, CJ (as he then was) speaking for the Bench

rejected the arguments made on behalf of the petitioner that the absence of provision requiring the detaining authority to provide for maximum period of detention was illegal. The learned C J, observed (at page 741 of AIR):

"There is no substance in this grievance because, any law of preventive detention has to provide for the maximum period of detention, just as any punitive law like the Penal Code has to provide for the maximum sentence which can be imposed for any offence. We should have thought that it would have been wrong to fix a minimum period of detention, regardless of the nature and seriousness of the grounds of detention. The fact that a person can be detained for the maximum period of 12 months does not place upon the detaining authority the obligation to direct that he shall be detained for the maximum period. The detaining authority can always exercise its discretion regarding the length of the period of detention. It must also be mentioned that, under the proviso to Section 13, the appropriate Government has the power to revoke or modify the order of detention at any earlier point of time."

On the basis of the above observations validity of a detention order passed under Section 3 of the National Security Act was challenged before this Court in *Ashok Kumar v. Delhi Administration & Ors.*, [1982] 2 SCC 403; (AIR 1982 SC 1143) on the ground that the Commissioner of Police, as well as the Administrator of Delhi Administration who confirmed the detention order failed to specify the period of detention while making the order of detention. A three Judges' Bench of this Court rejected the detention and upheld the validity of the detention order. A.P. Sen, J. Observed (at page 1147 of AIR):

"It is plain from a reading of Section 3 of the Act that there is no obvious fallacy underlying the submission that the detaining authority had the duty to specify the period of detention. It will be noticed that sub-section (1) of Section 3 stops with the words "make an order directing that such person be detained", and does not go further and pre-scribe that the detaining authority shall also specify the period of detention. Otherwise, there should have been the following words added at the end of this sub-section "and shall specify the period of such detention". What is true of sub-section (1) of Section 3 is also true of sub-section (2) thereof. It is not permissible for the courts, by a process of judicial construction, to alter or vary the terms of a Section. Under the scheme of the Act, the period of detention must necessarily vary according to the exigencies of each case i.e. the nature of the prejudicial activity complained of. It is not that the period of detention must in all circumstances extend to the maximum period of 12 months as laid down in Section 13 of the Act."

15. It is thus clear that the view taken in *Gurbux Biryani's case* (1988 (supp) SCC 568) on the interpretation of Section 3 of the Maharashtra Act is incorrect. This Court has while considering the question of the validity of the detention order made under different Acts, consistently taken the view that it is not necessary for the detaining authority or the State Government to specify the period of detention in the order. In the absence of any period being specified in

the order the detenu is required to be under detention for the maximum period prescribed under the Act, but it is always open to the State Government to modify or revoke the order even before the completion of the maximum period of detention. We are, therefore, of the opinion that the impugned order of detention is not rendered illegal on account of the detaining authority's failure to specify period of detention in the order.” (Emphasis supplied)

21. The above observations of the Apex Court specifically show that the Act nowhere requires detaining authority to specify the period for which the detainee is required to be detained. The expression, “the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order” occurring in sub-section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government authorising District Magistrate/Commissioner of Police is to remain in force and it has no relevance to the period of detention. The period, as mentioned in Section 3(2) of the Act, refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the Detaining Authority to specify the period for which a detainee is required to be detained, order of detention is not rendered invalid or illegal in absence of such specification. It needs to be clarified that there is no confusion while reading of provisions of Sections 3 and 13 of the Act, 1981 qua the order of detention or the period needs to be mentioned. Section 3(1) empowers the State Government to make an order directing such person to be detained with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. Section 3(2) of the said Act deals with delegation of the power of State Government to a District Magistrate or a Commissioner of Police to pass such orders of detention. Proviso to Section 3 (2) only refers to and deal with the period by which the State Government is empowered to delegate powers of detention to a District Magistrate or a Commissioner of Police as the case may be and such power delegated in favour of a District Magistrate or a Commissioner of Police shall not exceed six months in the first instance. This proviso is, therefore, not connected in any manner with the power of State Government or that of a District Magistrate or a Commissioner of Police as the case may be to pass order of detention as the Act nowhere specify that in such order of detention either pass by State Government or by the delegated authorities must mention the period of detention.

22. Thus, it is settled proposition of law from the catena of decisions of the Apex Court referred to in the case of Mrs. T.Devki (supra) that the Detaining Authority is not obliged to mention the period of detention in the order itself or to specify the period for which a detainee is required to be detained, the observations in the case of Gurbux Anandram Bhiryani (supra) are considered as not good law.

23. Admittedly, the above decision was not cited before this Court while deciding the matter of Balu s/o Waman Patole (supra). Thus, with utmost respect, the

observations of the coordinate bench in the case of Balu s/o Waman Patole (supra) specifically paragraphs 33 and 34 as quoted above, are contrary, to settled proposition of law laid down by the Apex Court in the case of Mrs.T. Devaki and the Constitutional bench decision in the case of Ujagar Singh (supra) and, therefore, cannot be relied upon being per incurium for deciding the submissions advanced by Mr. Kalra on the point that initial order must disclose the detention period. Since it is settled proposition of law that the Act nowhere provides that the Detaining Authority need to mention the period of detention in its order, such proposition cannot be accepted. Accordingly, the submissions of Mr. Kalra in this regard are devoid of merit.

24. The second ground is with regard to non-consideration of bail orders by the Detaining Authority. In this respect, Mr. Kalra has placed reliance on the observations in para no.14 in the case of Alexit Rajesh Ambade (supra) wherein a coordinate bench of this Court observed that detenue was granted bail by the Magistrate and the same has not been challenged. Said observations in para 14 are distinguishable from the matter in hand. First of all, the grounds of detention clearly show that it is based on two crime numbers as noted in para 7 earlier. Crime no.135/2022 is in connection with the offence of attempt to murder along with other offences under the Arms Act. Admittedly, the petitioner applied for bail in that matter and the same was rejected by the Additional Sessions Court which is found mention in para no.7.1.5 of the grounds of detention.

25. No doubt, the petitioner was granted bail in another Crime no.136/2022. However, it is also a fact that since he was in Magisterial custody in Crime No.135/2022, he was not released in Crime no.136/2022 inspite of grant of bail. He remained in Magisterial custody till he was taken in custody along with the detention order dated 30.7.2022. Rejection of bail of the petitioner in Crime no.135/2022 is a circumstance which shows that there is prima facie material against him for commission of the offence of attempt to commit murder with deadly weapons. Therefore, such contention raised on behalf of the petitioner is of no substance. Even otherwise, bail orders were only considered by the Detaining Authority.

26. Another challenge raised against the detention order is the delay in passing the order from the last date of registration of offence. It was contended that last offence alleged against the petitioner was committed somewhere end of April 2022, whereas the detention order is passed at the end of July 2022 and, therefore, there is inordinate delay. Reliance is placed in the case of Shivkumar Madeshwaran Devendra (supra) and more specifically on para 12. A coordinate bench of this Court in the above decision observed that the last date of incident considered by the Detaining Authority took place on 25.2.2021 and that the petitioner was granted bail on 6.3.2021. The Detaining Authority passed the order after delay of more than three months which has not been explained. With respect, the facts of the said case are distinguishable from the matter in hand for the simple reason that in the present matter though the detention order was

passed on 30.7.2022 thereby referring to last incident of 22.4.2022, the fact remains that the petitioner was in judicial custody through out the time when he was arrested in Crime No.135/2022 till passing of the detention order. The Detaining Authority discussed in detail in grounds of detention that there is possibility of releasing the petitioner on bail in Crime No.135/2022, as the Investigating Agency was about to file charge-sheet and, therefore, it was necessary to pass the order of detention so that the petitioner would not be allowed to indulge in such dangerous activities in case he release on bail. Thus, grounds of detention specify the reasons as to why the order was passed on 30.7.2022, which to our mind cannot be considered as delayed order specifically when the petitioner was in judicial custody.

27. The next submission is with regard to statements of witnesses A and B and want of subjective satisfaction of Detaining Authority. In this respect, reliance is placed in the case of Smt. Bismila wd/o Sheikh Rahim (supra). Said decision is not helpful to the petitioner for the simple reason that the grounds of detention are exhaustive which show that the Detaining Authority considered the verification report placed before it and also had personal discussion to arrive at subjective satisfaction that the petitioner's activity are extremely prejudicial to the maintenance of public order.

28. In case of Vinod Vithal Rane Vs. R.H. Mendonca and others : 2001 (2) Mh.L.J.437, the Division Bench of this Court observed that the Detaining Authority should satisfy itself from the grounds of detention and it is enough even the Detaining Authority to record the reasons for coming to such subjective satisfaction. Such reasons would indicate that the Detaining Authority, was cautious and aware about said position while recording subjective satisfaction. Once such subjective satisfaction is recorded by the Detaining Authority, it cannot be lightly interfered with by the Court.

29. In the case of Arun Ghosh Vs. State of West Bangal : 1970 (1) SCC 98, the Apex Court in para 3 considered distinction between commission of breach of law and order and detenue acting in a manner likely to cause disturbance of public order. Each case has to be dealt with independently and the question which the Court has to answer is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?

30. Applying above ratio to the matter in hand and the subjective satisfaction of the Detaining Authority in para nos. 8 to 12 as well as fact of both offences and the statements of two witnesses, it cannot be said that arrival of subjective satisfaction of the Detaining Authority is vitiated. The first offence registered against the detenue vide Crime No.135/2022 clearly show that the complainant was sitting near Shitala Mata Mandir when the detenue along with his externed associate approached the complainant and without any provocation demanded money. When the complainant, disclosed that he had no money, immediately the knife was used to assault the complainant in his abdomen and right chest. When

he shouted, the detainee along with his associate went away. The knife remained in the body of the complainant which was removed in the hospital. Accordingly satisfaction arrived at is based on cogent material and various documents which cannot be lightly brushed aside.

31. Record placed by the learned APP clearly goes to show that the case of the petitioner was referred to the Advisory Board, who heard the detainee through video conferencing and recorded their opinion that there is sufficient cause for continued detention of the petitioner under Section 3 of the Act. The recommendation of the Advisory Board is dated 26.8.2022, which is within time. We have also perused the statements of witnesses A and B and the verification recorded by the concerned Authority about it.

32. Having said so, the impugned orders cannot be termed as illegal and the challenge raised against it on the above grounds needs to be rejected.

33. The petition, therefore, fails and stands dismissed. Rule is discharged accordingly.